IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO. 429 OF 2004
IN
ARBITRATION PETITION NO.143 OF 2003

GSL (India) Limited .. Appellant

v/s.

Tata Finance Limited .. Respondent

Mr.R.R.Varma i/by Mr. A.M.Saraogi for appellant.

Mr. Dinesh Paramdare i/by M/s. A.Mehta Laljee & Co. for respondent.

Mr. S.N.Kadam, 2nd Asstt. to Court Receiver present.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 10th August, 2004

P.C.

Heard Mr. R.R. Varma, the learned counsel for the appellant and perused the order dated 26th March, 2004 impugned in the present appeal.

2. There appears to be no dispute that as on 31st December, 2003, the appellant-company owed a sum of Rs.1,73,07,652/- to the respondent. As a matter of fact, way back on 10th August, 1999 in relation to the dispute between the parties, the sole arbitrator has passed an award in favour of the present respondent and against the appellant directing the appellant to hand over the leased assets to the respondent herein and the appellant was directed to pay to the respondent a sum of Rs.75,48,252/- together with further service

charges at the rate of 24% per annum on Rs.61,45,930/- from 22nd May, 1997 until the date of payment and/or realisation. This is how under the award as on 31st December, 2003, an amount of Rs.1,73,07,652/- were outstanding against the present appellant. The present respondent filed petition under section 9 of the Arbitration and Conciliation Act, 1996. After hearing the parties, the learned Judge has ordered the appointment of Court Receiver on the leased assets and further directed the Court Receiver to appoint the present appellant as agent on usual terms. It is this order which is impugned in the present appeal.

3. The learned counsel for the appellant urged that the appellant-company is a sick industrial undertaking and the proceedings in relation to the appellant-company are pending before the BIFR. We are afraid, this contention is devoid of any substance, as admittedly, the subject assets have been leased out by the respondent to the appellant and in view thereof, section 22 of The Sick Industrial Companies (Special Provisions) Act, 1985 is not attracted.

4. The learned counsel for the appellant then sought to contend that the award has become time barred. From the impugned order, we find that no such argument was advanced before the learned single Judge. The learned counsel for the

appellant also could not show to us any provision in support of this argument.

5. The learned counsel for the appellant then handed in the draft amendment, seeking permission to raise the additional grounds. We permitted the learned counsel to address us on the additional grounds as well. However, the learned counsel on the basis of the additional grounds could not make out a case for interference in the impugned order. Suffice it to observe that the order passed by the learned single Judge is an interim protection order under section 9 of the Arbitration and Conciliation Act, 1996. The effect of this order is only until the arbitral award passed on 10th August, 1999 is enforced. All contentions regarding enforcibility of the arbitral award are kept open to be agitated by the appellant as and when such award is sought to be enforced.

6. With the aforesaid observations, appeal is dismissed in limine.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)